

Village of Wimberley
City Hall, 13210 Ranch Road 12
Wimberley, Texas
Minutes of City Council Meeting of Thursday, June 2, 2005

City Council called to order at 6:30 p.m. by Mayor Stephen Klepfer.

Council member John Graddy gave the Invocation.

The Pledge of Allegiance to the U.S. Flag was led by Mayor Klepfer and Council Member Manis led the Pledge of Allegiance to the Texas Flag.

Present were: Mayor Stephen Klepfer and Council members Carroll Czichos, John Graddy, Matt Manis, Curt Busk, and Marilee Wood.

Presentation of Citizens:

Mayor Klepfer administered the Oath of Office to new Planning and Zoning Commissioner, Susan Thurber.

A. Consent Items:

Since Council members wanted to discuss some issues on both items they were pulled from the Consent Items and handled as Consider & Act.

Minutes for Council meeting of May 19: Council member Busk questioned the format indicating that former Council member Nichols was present, not Council member Busk, and requested the correction be made to strike Council member Nichols from the roll call and insert Council member Busk.

Council member Czichos moved to adopt the minutes as amended. Council member Graddy seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

Resolution R-92-2005 Authorizing The Wimberley Chamber of Commerce to Organize and Conduct a Fourth of July 2005 Parade: Council members discussed assurance from TxDOT that the road surface would be safe for spectators during the parade, support from the Sheriff's Department, and whether the parade would be the same route and time as before.

Council Member Wood moved to accept Resolution R-92-2005 authorizing the Chamber of Commerce to conduct a parade on July 4th. Motion approved by a vote of 5 Ayes to 0 Nays.

B. City Administrator Report

1. Status of Community Center Construction Project:

City Administrator Steve Harrison said the Community Center Steering Committee meets the first Thursday of each month and is monitoring the construction project which is going as planned. The metal building is to arrive in Wimberley next week, and the construction process will begin. A water line existing in an easement belonging to Wimberley Water Supply Corporation, at the entrance to the property, is buried more shallowly than anticipated. Upon the engineer's advice, the four inch line, which runs parallel to RR12, will be lowered by Wimberley Water Supply Corporation, since it is their line, and will be safely relocated.

Mr. Harrison cited the Town Hall Meeting hosted by the Senior Citizens, June 8th, and explained that this is not a City sponsored meeting, and does not fall under the guidelines of the Open Meeting Act.

2. Status of Cypress Creek Nature Trail:

The contractor has begun work. Silt fencing has been installed. They will begin with a 300 foot section of the trail and the handicap ramp going to that area, and then they will move to the entrance area. The subcommittee is continuing to study the public restroom options. The water feature donated by Joe Waldschmidt is nearing completion. Around September should be the Nature Trail grand opening, followed by the Community Center opening soon after that.

C. Reports from Boards/Committees/Staff

(The Mayor announced that the Ethics Commission Report would be heard under Agenda Item D-2 since it related to this item)

1. Board of Adjustment:

Barbara Vansant presented the report and noted two BOA hearings since the last report to Council. The hearings in the month of March concerned Sierra West Homes, and Mr. Herschel McCullough. The Sierra West Homes case was continued pending additional information, and ultimately the applicant withdrew the variance request. At the hearing for Mr. McCullough, the Board of Adjustment granted a conditional variance predicated on four conditions being met. There were no hearings in the months of April and May. The Board's composition has changed with the resignations of Susan Thurber and Bob Flocke. Upon the departure of Susan Thurber, Chair, Barbara Vansant, Vice Chair, has assumed the position of Chair. A new Vice Chair will be elected at the next meeting.

D. Consider and Act**1. Application for Zoning (Public Hearing)**

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- **Acceptance of Concept Plan for ZA-05-194 (Application C211-05-194) 11552 Ranch Road 12 for WPDD Zoning to establish a sit-down eating establishment and retail sales and services. (Recommended for Approval by Planning & Zoning Commission by a vote of 7-0)**

P&Z Chair Tevis Grinstead presented the case. No comment was received in the public hearing. Council members discussed the term "legal non-conforming use" of the building, found on page 3 under Existing Developments, point D. It was determined to strike "non-conforming", therefore making the term "legal use". Further discussion ensued about the location of future parking, number of requested parking spaces, and the impervious cover used.

Council member Busk moved to approve ZA-05-194, at 11552 Ranch Road 12 for WPDD Zoning to establish a sit-down eating establishment and retail sales and services, and accept the Concept Plan as submitted with the change noted on page 3. Council member Wood seconded. Motion approved 5 Ayes to 0 Nays.

- **ZA-05-204 (Application CUP-05-204) for a Conditional Use Permit to operate a Bed & Breakfast Lodging Facility located at 505 River Road. (Recommended for Approval by Planning & Zoning Commission by a vote of 7-0)**

P&Z Chair Grinstead presented the case. No comment was received in the Public Hearing. Council members discussed the restricted usage of Cypress Creek as being part of the applicant's house rules.

Council member Wood moved to accept Ordinance ZA-05-204 for approval. Council member Graddy seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

- **File No. CUP-05-009 for a Conditional Use Permit to operate a Bed & Breakfast Lodging Facility located at 1900 Hilltop Drive. (Recommended for Denial by the Planning & Zoning Commission by a vote of 7-0)**

P&Z Chair Grinstead presented the case, along with a written report (attached to these minutes) summarizing the findings of the Planning & Zoning Commission.

The public hearing was opened: The City Administrator presented a copy of letters and a petition which the City had received in support of or opposed to this application.

Applicant, Gary Chapman addressed the Council, representing himself and his wife, and recommended approval of the application;

Barry Tyler, a resident of 100 Sunrise Circle, spoke regarding the density issue of B&B's in the area. A plat was presented to Council members.

Dan Sturdivant, a resident of 745 Sunset presented a written statement for the record (attached to these minutes).

Habib Erkan, 111 Soledad, San Antonio, spoke as legal counsel for the applicants.

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Barbara Alexander, a resident of 220 Sunset Drive, Betty Williams, a resident of Hilltop, and Mike Bingham, a resident of 306 Valley Drive, shared concerns about long term rental, safety and traffic issues.

The Public Hearing was closed.

Council members directed questions to the applicants and their counsel for further clarification.

Habib Erkan, as the applicants' legal representative, addressed the Council members, and stated concerns about the petition that had been presented, and the change in the environment since the applicants had purchased the property, and asked that the application not be denied.

Discussion followed among Council members regarding property rights, neighborhood impact, planning and direction of land use in preserving small town character.

City Administrator Steve Harrison noted that, procedurally, Council is required to have a super majority for two reasons: (1) if looking to overturn the recommendation from P&Z; (2) if 20% of the land owners within 200 feet of the property voice opposition. In this case, it is determined that over 20% of the land owners have expressed opposition to the CUP being granted.

Council member Graddy moved that Council deny No.CUP-05-009 for Conditional Use Permit to operate a Bed & Breakfast Lodging Facility located at 1900 Hilltop Drive. Council member Busk seconded. Mayor Klepfer asked for a roll call vote on the motion. Council member Busk voted Aye; Council member Manis voted Aye; Council member Wood voted Aye; Council member Graddy voted Aye; Council member Czichos voted Nay. Motion was approved by a vote of 4 Ayes to 1 Nay.

2. Accept Report from Ethics Commission regarding Preliminary Findings and Conclusions Related to an Ethics Complaint filed with The Village.

John Meyer, Chair of the Ethics Commission, presented the Ethics Report. Since the last report there has been one Ethics Ordinance complaint. A request had been made of the City Attorney for clarification of terms in the Ethics Code and also for assistance with developing a format for hearings. Four Ethics Commissioners' terms expire in August.

Chairman Meyer further reported that the Ethics Ordinance states that a hearing may be reported in numerous ways, one of which is presenting Council with minutes of the meeting. He noted that their minutes have been forwarded to Council. Mr. Meyer read aloud the portion from the minutes regarding the recent hearing. Discussion followed regarding preliminary determination in Ethics Code violations, procedural issues, and interpretation of certain terms of the ordinance.

Council member Manis moved to accept the report of the Ethics Commission regarding the preliminary findings and conclusions related to an ethics complaint filed with the Village. Council member Czichos seconded. Further discussion ensued.

Mayor Klepfer asked for a roll call vote on the motion to accept the report from the Ethics Commission. Council member Manis voted Aye; Council member Wood voted Aye; Council

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member Graddy voted Aye; Council member Czichos voted Aye; Council member Busk voted Nay. The motion was approved by a vote of 4 Ayes to 1 Nay.

3. Receive Report from the Board of Adjustment regarding Actions Taken on Antenna Ordinance Variance Request (File BA-05-019) related to the Antenna located at 216 Mill Race Lane.

No report was given beyond the previous report under Report Section of these minutes.

**E. Close Open Session and Convene Executive Session:
Discuss a Complaint by Mac McCullough regarding the Actions of the City Administrator in Administering the Order of the Board of Adjustment in the Conditional Variance for an Antenna.**

Mayor Klepfer read the item and advised that the Council would go into Executive Session to discuss a personnel matter regarding a citizen complaint against the City Administrator.

City Administrator Steve Harrison addressed the Council, and cited Section 551.074. B, of the Government Code and requested that all discussion occur in Open Public Session, not Executive Session. The matter was therefore discussed in Open Session.

The Mayor asked Herschel McCullough, a resident of 216 Mill Race Lane, to outline his complaint. He stated that he applied for a Variance and The Board of Adjustment approved the Variance with four conditions to be met within a 21 day deadline. He claimed he submitted a response on the 19th or 20th day and later he received a letter from the City Administrator informing him that the Variance was denied since he had failed to satisfy the conditions imposed by the Board. He further stated he received no contact from Mr. Harrison prior to receiving the letter. He stated that no one contacted him at the contact number on his application; that he took the tower down and that Dr. Harrison is guilty of bad faith in negotiating with him.

Council member Czichos questioned if the antenna was still down, and if State and Federal laws regarding HAM radio operators superseded City laws. Mayor Klepfer said that issue would be for a District Court Judge to determine; however, the Village Antenna Ordinance had been revised to include all provisions required by Federal Law.

Mayor Klepfer summarized the facts of the Village's actions in an attempt to assure the actions were not reached in an arbitrary or capricious manner; that the case began much further back with the writing of an Antenna Ordinance; that input was gained from Herschel McCullough, then living in Dallas, who corresponded at length with the City in the creation of the original ordinance regarding many issues relating to HAM operators and their rights; that at Mr. McCullough's request the City re-wrote sections to better protect HAM operators; that Mr. McCullough built an antenna which did not follow the ordinance he helped write. It was noted that Mr. McCullough is the Chair of the Building Code Board of Review, he helped write the Antenna Ordinance, he didn't follow the conditions required; that a request for variance was made, five qualified people determined that the conditions had not been met for the granting of the variance; that the City Administrator was enforcing an Ordinance which was passed unanimously by both P&Z and City Council and that he is employed to enforce the laws which have been passed.

Council members had further discussion, including that Mr. McCullough had the right to go back to the Board of Adjustment concerning the ruling made. City Attorney, Patty Akers, clarified that the City Administrator only has administrative discretion, and that any decision made is appealable. Ms. Akers advised Council members that the Board of Adjustment set the deadline for the submission of the conditional information required, and the City Administrator had no provision to extend that deadline and would have been in violation of his duties had he continued negotiation and discussion. Mr. Harrison read from the Order issued by the Board of Adjustment: *"The applicant must meet each and every one of the following conditions on or before the date specified below or this Variance shall automatically expire";* and that *"Applicant shall demonstrate to the satisfaction of the City Administrator compliance with the following conditions:"* No action was taken by the Council on this matter.

5. Authorize City Administrator to Accept Proposal from City Engineer to Conduct a Study of Areas Affected by High Water (Recommended by TAB)

Chairman Corwin Vansant presented the proposal by the Transportation Advisory Board that City Engineer, Joel Wilkinson, study the solutions to the low water crossing problem, repairs involved, and alternate routes in case of emergency. Chairman Vansant stated there are funds within the current budget that could cover the cost of the study.

Mark Roden and David Joiner, residents of impacted areas, encouraged approval of the study.

Council member Wood noted that if the City had data to present, as would be provided by this study, other sources of funding might be available, and discussion followed.

Council member Czichos, speaking as the Fire Chief, said this study would positively affect emergency service providers.

Council member Wood moved that Council authorize the City Administrator to accept the proposal for the City Engineer to conduct a study of areas affected by high water. Council member Czichos seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

6. Discuss Adoption of Village of Wimberley Code of Ordinances.

City Attorney Akers stated there was still an error in the Code, which her office had caught and tagged, but which did not get put into the book. This causes concern there may be more errors, for which she is checking. Ms. Akers noted the Ordinances are up to date as of August, 2004, but that there have been amendments and changes since that date. She recommended Council get an estimate of the amount of replacement pages, specifically the Sign Ordinance and Ordinance Amendments, which have taken place since August, 2004, and have the company do those replacement pages before an adoption. Discussion followed regarding the best way to avoid the possibility of confusion with the changes involved. Council members recommended sending the book back to the Committees and Commissions, especially P&Z, and have them take a closer look to ensure wording and intent.

7. Acceptance of Use Plan for Blue Hole Regional Park – Summer 2005 (Council member

Wood)

Council member Wood said the Parks Board met in Special Called Meeting following the Party In The Park. Since the event was so well received they proposed opening the Blue Hole for Sunday and Monday of the July 4th weekend; for Saturday, August 6th and Sunday, August 7th; and for Labor Day weekend, Saturday, September 3rd and Sunday, September 4th, which would add six days of Blue Hole swimming for the summer. Council member Wood praised everyone who had volunteered to help with the event.

The City Administrator directed Council members' attention to documents previously handed out. He said the Parks Board suggested a change to the plan, two days opening at a time instead of one. Also cited were hours of activity, fees, park rules, parking, communication, liability, park policy, swimming supervision, further exploration of firms to do other administrative duties. The cost for six days of operation is available within the current budgeted line item for Blue Hole operation.

Council member Wood noted 110 individuals signed up as "Friends of the Blue Hole", and volunteering for special events. This is being put into a data base for reference. Council member Busk expressed his hope that the rules would eventually reflect no bicycles or skateboards, as well as no vehicles.

Council member Czichos suggested no Styrofoam allowed, and that fires be allowed in barbecue grills. Council members discussed the entry fee amount and agreed that \$5.00 per person was reasonable, with no charge for children five years of age and under.

Council member Manis suggested rewording of the firearms restriction in the park to allow licensed handgun carriers, as required by State Law.

Council member Czichos suggested the consideration of arm or wrist bands.

Council member Wood moved that Council accept the Use Plan for Blue Hole Regional Park for the Summer, 2005. Council member Graddy seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

8. Appointment of Member to Transportation Advisory Board (Council member Czichos)

Council member Graddy moved to accept the appointment of Bob Flocke to the Transportation Advisory Board. Council member Manis seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

9. Appointment of Member to Zoning Board of Adjustment (Council member Busk)

Council member Graddy moved to accept the appointment of Jason Aldridge to the Zoning Board of Adjustment. Council member Czichos seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

10. Accept Resignations from Board Members: Jean Ross, EDAB; Bob Flocke, Board of Adjustment; Susan Thurber, Board of Adjustment.

Council member Czichos moved to accept the resignations. Council member Wood seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

11. Authorize additional signatories for City checks.

Council member Graddy moved to add Council member Busk as an additional signatory for City checks. Council member Czichos seconded. Motion approved by a vote of 5 Ayes to 0 Nays.

F. Announcements and Council Requests for Future Agenda Items.

Council member Wood said she was working on a Resolution to submit Wimberley and the Blue Hole Project to a *Preserve America Community* designation, a Federal program which would provide a Presidential recognition of the project and would open the possibility of Federal funding, and this would be an item on the next agenda.

The Mayor announced Council member Busk would be Liaison to the Budget, Investment and Finance Advisory Board, and would also be working on the corrections in the Codification of Ordinances.


Council member Busk is planning to appoint a new member to the Water/Wastewater Board.

Mayor Klepfer praised the two Blue Hole events of the previous weekend: The Blue Hole Gala on Friday night, and The Party In The Park on Saturday, and all of those who volunteered.


City Attorney Patty Akers encouraged attendance at the Bickerstaff Training Session scheduled for June 18th, noting a number of legislative changes which will be covered.

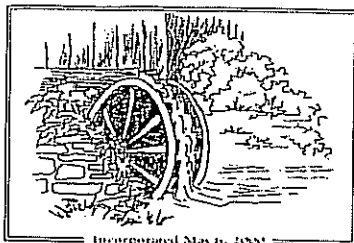
G. Adjournment

Council adjourned at 9:35 p.m.

VILLAGE OF WIMBERLEY
By 
Stephen J. Klepfer, Mayor

Respectfully Submitted By:


Cindy Covert, City Secretary



Village of Wimberley

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Stephen Klepfer, Mayor - Carroll Czichos, Mayor Pro Tem
Council Members - Curt Busk, John Graddy, Matt Manis, Marilee Wood
Stephen J. Harrison, City Administrator

June 2, 2005

Report on Recommended Denial of a Conditional Use Permit for Bed & Breakfast Lodging at 1900 Hilltop Place, Wimberley (Application #CUP-05-009) Pursuant to Section 11.6.A of the Village Zoning Ordinance No. 2001-010, as Amended (the Ordinance")

To: Village of Wimberley City Council

Name of Applicant(s): John G. Chapman & Charlotte Green

Location of and Description of Property: 1900 Hilltop Drive, Wimberley TX 78676.
See attached Public Hearing Notice

Zoning Requested: The subject property is currently zoned Residential (R-2) and is located in Planning Area A. The Village of Wimberley (the "Village") City Council, through recommendation from its Planning and Zoning Commission (the "Commission") will consider the applicant's request to change from the existing zoning to add a Conditional Use Permit ("CUP") and in conjunction with the application, the Village will consider whether or not to pass an ordinance that approves the issuance of a CUP for use of the property as a Bed and Breakfast Lodging Facility. The application for the subject property proposes that the base zoning for the property shall continue to be Residential (R-2).

Concept Plan and Traffic Impact Analysis Recommended by the Planning and Zoning Commission: None required

Hearing

The hearing opened with a statement from the applicant, and the applicant and his consultant spoke several times during the hearing. The Commission was advised that the applicant would agree to (1) limiting the number of times the property would be rented in a month to perhaps two weekends; (2), limit the age of occupants to 25 and above; (3) hire a manager to be responsible for supervising the property while it was rented; and (4) be personally accessible to neighbors for complaints. The applicant's consultant indicated that the applicant might be satisfied with a CUP that would be limited in duration to ten years.

The Commission then heard from the public. Each person was given 3 minutes to speak and each person was permitted to speak as many times as he wished.

One person who did not live in Paradise Hills spoke on behalf of the applicant. At least 10 people living in Paradise Hills spoke in opposition to the applicant. In addition the Commission considered 3 letters signed by 8 persons living in Paradise Hills supporting the applicant and a petitions and letters opposing the applicant from 83 persons living in Paradise Hills representing 54 of the approximately 109 properties in that area. A summary of the petitions was also considered. All of these letters, petitions, and documents have been submitted to the Council.

In addition the Commission received testimony on the number of Bed and Breakfast Lodging Facilities in the immediate area of the applicant and the adverse effect of increasing the density of such facilities

The Commission was interested in whether the Applicant and the residents of Paradise Hills had tried to compromise this matter. They were informed that the President of the Homeowner's Association had invited residents and the Applicant to his home to discuss this matter. The meeting was poorly attended and no resolution was reached.

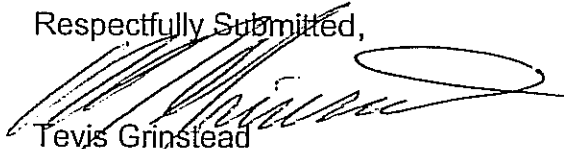
Findings, Evaluation, and Relationship to Comprehensive Plan

In recommending a CUP "the Village shall determine that such uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration". Ord. 42.2 A. The Commission may consider the factors set forth in 42.2.A and with respect to CUPs for Bed and Breakfast Lodging those set forth in 42.3. In addition they must "consider the impact of tenant activity on the surrounding residential properties, the neighborhood and environment..." The Commission considered all of these factors in light of the testimony received, and the letters, petitions and other documents presented. The Commission took in to account the fact that the proposed facility would not be owner occupied, and the number of Bed and Breakfast Lodging facilities previously approved and grand fathered in the neighborhood.

The Commission found overwhelming opposition to this application. While opponents expressed their opposition differently, as set forth in the letters and petition, it was clear to the Commission that the addition of this non-owner occupied facility to the neighborhood would have a material adverse impact on the surrounding properties and the neighborhood and would be harmful to the quality of life in the neighborhood. This was obvious as each Commissioner individually stated his reasoning immediately prior to the Commission recommending denial of the Application. Consequently The Commission was unable to make the determination that the requested "uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises..." Ord. 42.2.A. Based on the foregoing granting this request would be contrary to the intent and purpose of the Village's Comprehensive Plan.

Zoning Recommendation of the Planning and Zoning Commission: After considering the relevant factors set out in the Village of Wimberley Zoning Ordinance No. 2001-010, as amended, testimony from the applicant and the public in the Public Hearing, comments made during the meeting of the Commission, the application's relationship to the Village Comprehensive Plan, and subsequent deliberations by the Commission, the Commission recommends that the City Council deny applicant's zoning application for a Conditional Use Permit for a Bed and Breakfast Lodging Facility. This Report constitutes the Commission's reasons for recommending denial of the application. The vote was seven (7) in favor of denial of the request for a Conditional Use Permit (0) opposed; zero (0) absent.

Respectfully Submitted,



Tevis Grinstead
Chair, Planning & Commission